

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2012-0002**

**ADOPTION OF A CLEAN WATER STATE REVOLVING FUND PROGRAM PRELIMINARY
FUNDING COMMITMENT FOR THE CITY OF RIO DELL'S WASTEWATER TREATMENT
PLANT UPGRADE AND DISPOSAL PROJECT**

WHEREAS:

1. The State Water Resources Control Board (State Water Board), on March 17, 2009, amended the *Policy for Implementing the CWSRF for Construction of Wastewater Treatment Facilities*;
2. The State Water Board's CWSRF Program Project Priority List (PPL), amended on April 12, 2011, included the City's CWSRF Project No. C-06-7401-110;
3. The Division of Financial Assistance (Division) issued a Facility Plan Approval (FPA) for the City's Project and the City agreed with the content and conditions of the FPA;
4. Per the CWSRF Intended Use Plan, adopted by the State Water Board on May 17, 2011, \$97,770,482 in principal forgiveness is available;
5. As a small (less than 20,000 persons), severely disadvantaged community (median household income [MHI] less than 60 percent of the statewide MHI) with wastewater user rates more than 1.5 percent of the community's MHI, the City may receive 50 percent principal forgiveness for eligible Project costs up to \$6 million in principal forgiveness;
6. The City prepared an Environmental Impact Report (EIR; State Clearinghouse No. 2007062006) for a larger project (the Project is a revised subset of the larger project);
7. The City certified the EIR, adopted a Mitigation Monitoring and Reporting Program (MMRP), and approved the larger project (the Project is a revised subset of the larger project) on May 20, 2008, and filed a Notice of Determination (NOD) with the Humboldt County Clerk on May 21, 2008 and the Governor's Office of Planning and Research (OPR) on May 27, 2008, for the EIR;
8. The City prepared an addendum to the EIR (Addendum No. 1) to analyze an interim project, including addressing improvements to the headworks, temporarily installing a chlorine generator (disinfection system) and sludge press;
9. The City certified the Addendum No. 1 and approved the interim project on June 2, 2009, and filed an NOD with the Humboldt County Clerk on June 4, 2009 and OPR on June 8, 2009, for the Addendum No. 1;
10. The City prepared a second addendum to the EIR (Addendum No. 2) to address the Project, revisions to Alternative 1 in the EIR and applicable mitigation measures, the addition of two potential transmission pipeline route options (Routes 1 and 2), and a change from Type I irrigation to Type II flood irrigation (this eliminated the need for a storage pond);

11. The City certified the Addendum No. 2, adopted a revised MMRP, and approved the Project on October 5, 2010, and filed an NOD with the Humboldt County Clerk on October 7, 2010, and OPR on November 3, 2010, for the Addendum No. 2;
12. The City incorporated mitigation measures or alternative design into the Project that will avoid or substantially reduce potentially significant adverse environmental impacts;
13. The EIR and the supporting documents provided an adequate disclosure of the environmental relationships of all water quality aspects of the Project. The Project will not result in any significant adverse water quality impacts. A special condition will be included in the City's CWSRF financing agreement to ensure compliance with the Migratory Bird Treaty Act (MBTA);
14. Several bird species listed under the federal Migratory Bird Treaty Act (MBTA) have the potential to occur in the riparian woodland forest (adjacent to the irrigation site). There will be no impacts to the riparian woodland habitat as the Project will occur away from the riparian habitat, but the City will implement mitigation measures to ensure less than significant impacts will occur to migratory bird species; and
15. The City is currently defending two lawsuits related to the construction bidding process.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves a CWSRF PFC of \$13,424,895 for the City's Project with an extended term of 30 years and \$6 million in Principal Forgiveness. The first repayment shall be due one year after completion of construction.
2. Directs Division staff to allocate \$13,424,895 consistent with the construction schedule and availability of funds.
3. Conditions this approval by withdrawing the CWSRF PFC if the City does not sign the CWSRF financing agreement by June 29, 2012. In accordance with Section IX.K.3 of the Policy, the Deputy Director of the Division (or designee) may approve up to a 120-day extension for good cause.
4. Conditions this approval to require the City to implement mitigation measures 6-5 as identified in the EIR, the Addendum No. 2 and the MMRPs to reduce potential impacts to migratory bird species in accordance with the MBTA.
5. Conditions this approval, to require the following:
 - a. The City shall covenant to establish rates and charges in amounts sufficient to generate net revenues equal to at least 1.10 times total annual debt service;
 - b. The City shall establish a Reserve Fund equal to one year's debt service from available cash prior to the construction completion date;
 - c. The City must implement all approved rate increases;
 - d. The City may not incur future senior debt. Future debt may be on parity with CWSRF debt if Policy conditions are met (CWSRF Policy Section X.G1); and

- e. The financing agreement shall be limited to a maximum of \$13,424,895, with an interest rate of one-half the most recent general obligation bond rate as of today's date and a 30-year repayment term, and with the expectation that \$6 million in principal will be forgiven upon satisfaction of the terms and conditions of the financing agreement. If information relating to the credit review changes a supplemental credit review may be required.
6. Conditions this approval to require the City to provide immediate notification to the State Water Board Project Manager if the ongoing litigation will jeopardize the City's ability to repay the CWSRF financing, and provide the State Water Board Project Manager with a copy of any new settlement agreements or revised court rulings within 15 days of such event.
7. Directs Division staff to incorporate bid costs into the financing agreement and disburse funds for construction only after the City provides the following:
 - a. A legal opinion certifying that the City has sufficient property rights in the land used for all portions of the Project to enable it to access, construct, operate, maintain, repair, monitor, and allow for outside inspections of the Project throughout the useful life of the Project and/or the CWSRF financing term, whichever period is longer; and
 - b. A legal opinion certifying that (1) all pending bid and/or contract disputes have been resolved; and (2) there is no pending or anticipated litigation or dispute that will detrimentally affect (a) the City's payment source, (b) the ability of the City to agree to pay the CWSRF financing, or (c) the ability of the City to manage and implement the Project.
8. Conditions this approval to require the City to sign an amended financing agreement that incorporates bid costs on or before January 10, 2013. Division staff may approve up to a 120-day extension for good cause.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 10, 2012.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Tam M. Doduc

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board